IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9116 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJ STATE ROAD TRANSPORT CORPN

Versus

ASRAFKHAN A. PATHAN

Appearance:

MS KRINA C. THAKKAR for Petitioner

MR PJ YAGNIK for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 23/12/2002

ORAL JUDGEMENT

#. By filing instant petition under Article 227 of the Constitution of India, the petitioner, i.e. the Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation"), has prayed to quash the order dated August 20, 1992, passed by the Conciliation Officer, Ahmedabad, refusing to accord approval of the action taken by the petitioner, namely, dismissal of the respondent from service, on the ground that the respondent was not paid wages for one month before making application for approval.

#. The respondent was employed by the petitioner as Driver. On May 17, 1991, he was supposed to report for duty at Polytechnic Bureau point. He was late in reporting for duty as a result of which the employees/ officers serving in Sachivalaya could not report for their duties in time. Some of the employees/ officers of the Sachivalaya who were late in reporting for duty made a written complaint on June 19, 1991. Therefore, the then Assistant Traffic Inspector, Mr.S.S.Munshi, attempted to record the statement of the respondent on June 19, 1991. However, the respondent refused to give statement and arrogantly informed Mr.Munshi that he would not mind even if he was dismissed from service. Under the circumstances, a Departmental Inquiry was initiated against the respondent. On the basis of (i) report No.2531 dated June 16, 1991 forwarded by the Assistant Traffic Inspector Mr.N.R.Shah, (ii) chargesheet dated July 24, 1991, (iii) reply of the respondent dated July 30, 1991 to the chargesheet, (iv) documents produced by the reporter as well as the respondent during the course of personal hearing on December 4, 1991, (v) show cause notice dated December 19, 1991, and (vi) reply dated December 21, 1991, given by the respondent to the show cause notice, the disciplinary authority concluded that the respondent had committed breach of Regulation Nos.9, 10, and 11 of the Regulations framed by the Corporation and that he was liable to be dismissed from service. Accordingly, by passing an order dated December 26, 1991, the disciplinary authority dismissed the respondent from service. On the same day, i.e. on December 26, 1991, the Traffic Inspector attempted to pay wages for one month to the respondent but the respondent refused to accept the same. Therefore, the Traffic Inspector reported this fact to the Senior Deputy Manager by communication dated December 26, 1991, which is produced at Annexure-III to the petition. Further, the order of dismissal from service was also sought to be served on the respondent but the respondent having refused to accept the same, it was pasted on the notice board of the Corporation in the presence of Panchas on December 26, 1991. It may be stated that the Union of employees at the relevant time had raised an industrial dispute which was pending before the Conciliation Officer and therefore, by submitting an application in the prescribed Form No.XVIII, the petitioner sought approval of the action which was taken against the respondent. In the said application, it was clearly stated that the respondent was paid wages for one month. During the penndency of hearing of application for approval submitted by the petitioner, an application dated July 22, 1992, was submitted by the petitioner stating

inter-alia that the order dismissing the respondent from service was sought to be served on the respondent on the same day, i.e. on December 26, 1991, and that the wages for one month were also tendered to him on that very day, but the respondent had refused to accept the same, and that wages for one month were paid to the respondent on the next day, i.e. on December 27, 1991, by despatching money order. Along with the said application, seven documents were annexed for consideration of the Conciliation Officer and the document at Sr.No.7 was the letter dated December 26, 1991, addressed by the Traffic Inspector to the Senior Deputy Manager, mentioning that the respondent had refused to accept the order dismissing him from service as well as the wages for one month.

#. The Conciliation Officer rejected the application for approval on the ground that no evidence was produced by the petitieonr to establish that wages for one month were paid to the respondent which has given rise to the present petition.

#. Ms.Krina C.Thakkar, learned counsel for the petitioner, submitted that the contemporary record, namely, the letter dated December 26, 1991, addressed by the Traffic Inspector to the Senior Deputy Manager, would indicate that the respondent was paid wages for one month but he had refused to accept the same and therefore, the Conciliation officer was not justified in rejecting the approval application on the ground that wages for one month were not paid to the respondent. The learned counsel for the petitioner highlighted that the letter dated December 26, 1991, addressed by the Traffic Inspector to the Senior Deputy Manager, was produced for consideration of the Conciliation Officer which is quite evident from the contents of letter dated July 22, 1992, addressed to the Conciliation Officer, and therefore, in view of the clinching evidence produced before the Conciliation Officer, the approval application could not have been rejected on the ground that the provisions of Section 33(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") were not complied with. The learned counsel asserted that the order passed by the Conciliation Officer exhibits complete non application of mind and is perverse and, therefore, should be set aside by the Court.

#. Mr.P.J.Yagnik, learned counsel for the respondent contended that the record of the case does not indicate that the respondent was paid wages for one month before filing application for approval and therefore, the impugned order passed by the Conciliation Officer should

not be interfered with by the Court. It was pleaded that the petitioner having failed to establish compliance of mandatory provisions of Section 33(2) of the Act, the petition should be dismissed. What was stressed by the learned counsel for the respondent was that there is neither error apparent on the face of record evident from the order passed by the Conciliation Officer nor the order passed by the Conciliation Officer can be regarded as perverse and as no ground for interference is made out by the petitioner, the petition should be dismissed, more particularly, in view of the principle propounded by the Supreme Court in (i) Mohd. Yunus v. Mohd. Mustaqim and others, reported in AIR 1984 SC 38, and (2) Mohan Amba Prasad Agnihotri and others v. Bhaskar Balwant Aher (D) through LRS., reported in (2000)3 SCC 190.

#. The Court has considered the submissions advanced at the Bar and the documents forming part of the petition.

#. From the record of the case, there is no manner of doubt that on the day on which the respondent was dismissed from service, the petitioner had paid wages for one month to the respondent, but the respondent had refused to accept the same. This is quite evident from the communication dated December 26, 1991, addressed by the Traffic Inspector to the Senior Deputy Manager, wherein it is clearly stated that the order dismissing the respondent from service was sought to be served and that wages for one month were also attempted to be paid to the respondent but the respondent had refused to accept the same. Reference to above referred to communication dated December 26, 1991, is to be found in letter dated July 22, 1992, addressed by the Senior Deputy Manager, S.T., Ahmedabad, to the Conciliation Officer, Ahmedabad. It is not the case of the respondent that the communication dated December 26, 1991, addressed by the Traffic Inspector to the Senior Deputy Manager, Ahmedabad, is a got up evidence or that it is subsequently concocted to defeat his claim. At no point of time, the genuineness or correctness of the communication dated December 26, 1991, was disputed by the respondent. Even before this Court, it is not remotely suggested that the said document is a got up one and therefore should be discarded by the Court. Though duly served, the respondent has not filed reply affidavit controverting the averment made by the petitioner to the effect that wages for one month were paid to the respondent, but the respondent had refused to accept the same nor anything is stated raising doubt about the genuineness of letter dated December 26, 1991. In view of the clinching evidence produced before Conciliation

Officer and before this Court, there is no manner of doubt that the petitioner had paid wages for one month to the respondent but the respondent had refused to accept the same. In the light of these facts, it is difficult to uphold the finding recorded by the Conciliation Officer to the effect that the provisions of Section 33(2) of the Act were not complied with by the petitioner. In fact, the provisions of Section 33(2) of the Act were complied with by the petitioner and therefore, approval of the action, namely dismissal of the respondent from service could not have been refused on the ground that wages for one month were not paid to the respondent. A bare reading of the order passed by the Conciliation officer, which is impugned in the instant petition, would indicate complete non application of mind on the part of Conciliation Officer. Though relevant documents were produced for perusal, the Conciliation Officer has arbitrarily ignored the letter dated December 26, 1991, and recorded a finding of fact that wages for one month were not paid to the respondent. This finding is contrary to the facts on the record of the case and is perverse. There is no manner of doubt that while exercising supervisory powers under Article 227 of the Constitution of India, the High Court does not exercise appellate powers and would not appreciate or reappreciate the evidence. However, the facts of the case would indicate that the evidence which was never disputed by the respondent is ignored by the Conciliation Officer for the reasons best known to him. The order impugned in the petition establishes that the Conciliation Officer has committed an error apparent on the face of the record and has passed an order which cannot be sustained under the law. Therefore, the principles laid down in the decisions relied upon by the learned counsel for the respondent are not applicable to the facts of the present case and the petition cannot be rejected on the basis of those two decisions.

#. The net result of the above discussion is that the petition will have to be accepted. For the foregoing reasons, the petition succeeds. The order dated August 20, 1992, passed by the Conciliation Officer, refusing to accord approval of the action taken by the petitioner, is hereby set aside. The approval application stands granted. Rule is made absolute. There shall be no orders as to costs.

#. At this stage, the learned counsel for the respondent prays that the operation of the order passed by the Court in instant petition be kept in abeyance for a reasonable period so as to enable the respondent to challenge the

same before the higher forum. As indicated hereinabove, the Conciliation Officer has refused to accord approval on arbitrary grounds. Having regard to the facts of the case, the Court is of the opinion that such a relief is not called for. Therefore, the prayer made by the learned counsel of the respondent to keep the operation of the order passed in instant petition in abeyance for a reasonable period to enable the respondent to approach the higher forum is hereby rejected.

(J.M.Panchal, J.)

(sunil)